

REMARKS

Reconsideration and allowance of this application are respectfully requested.

Claims 33-54 are pending in this application.

The Specification is amended by this Response to insert the patent number and corresponding issue date of one of the priority applications in the first paragraph. No new matter has been added by these amendments, and approval and entry of this amendment to the Specification is respectfully requested.

The Double Patenting Rejection

Claim 1 stands rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,275,470.

Applicant will file separately a Terminal Disclaimer to overcome this double patenting rejection.

Note on Priority

This application is a continuation of U.S. Application No. 09/916,628 (now U.S. patent No. 6,778,502), which is a continuation of 09/888,966 (now U.S. Patent No. 6,473,405), which is a continuation of 09/336,487, filed June 18, 1999 (now U.S. Patent No. 6,275,470). When the first Office Action was issued (on July 25, 2006), this continuity information was not correctly reflected in the Patent Office's online system (PAIR). On October 24, 2006, at applicant's request, the Office issued a corrected filing receipt reflecting this application's priority.

The Prior Art Rejections

The Examiner rejected claims 33-37, and 41-54 under 35 U.S.C. §102(e) over U.S. Patent No. 6,658,479 (Zaumen) and claims 38-40 under 35 U.S.C. §103 over the '479 Patent in view of U.S. 2002/0163889 (Yemini).

Applicant respectfully submits that neither Zaumen nor Yemini qualify as prior art under §102 with respect to the present application. The priority date of the present

application under §120 is June 18, 1999. (As noted above, the Patent Office acknowledged this application's priority and issued a corrected filing receipt on 10/24/2006.) The '479 patent has an effective date under §102 of no earlier than June 30, 2000 and the '889 publication has an effective §102 date of no earlier than July 6, 2000. Both of these dates are after the priority date to which this application is entitled under §120.

In view of the above, withdrawal of these rejections under §§ 102 and 103 are respectfully requested.

Related Prior Litigation

Applicant hereby advises the Patent Office that U.S. Patent No. 6,275,470 (of which the present application is a continuation and from which the present application claims priority under §120) was previously involved in litigation.

The litigation was brought by Cable & Wireless Internet Services, Inc. (a predecessor in ownership of the patent) on 08/01/2002 against Akamai Technologies, Inc. for patent infringement. This litigation was captioned: *Cable & Wireless Internet Services, Inc. v. Akamai Technologies, Inc.*, No. CV-02-3708 (CRB) and was terminated by settlement between the parties in November, 2003.

Various publicly available documents filed by the parties and/or issued by the Court in that case are provided with an Information Disclosure Statement filed herewith.

The IDS of Sept. 29, 2003

The Examiner indicated that the following two references in applicant's IDS of 09/23/2003 were "not in [the] file."

- Web Site, "Scaling the Internet," *Inktomi Corp.*, www.inktomi.com, pp. 1-5.
- Web Site, "Are you Akamaized?", *Akamai*, www.akamai.com, 1999, pp. 1-2.

Applicant has obtained what are believed to be correct copies of these documents. However, Applicant respectfully notes that these references were cited and considered by the Examiner in the applications from which the present application claims priority under §120. Further, (1) these applications were properly identified in the IDS (per 37 CFR

1.98(d)(1)) and (2) the IDSs submitted in the earlier applications complied with 37 CFR 1.98(d)(2). The Examiner is kindly requested to obtain copies of these two references from the Patent Office files of the priority applications.

The Examiner is further requested to make these references of record and to return the attached PTO Form 1449 indicating that they have been considered.

The Drawings

Replacements for Figures 1 and 5 are provided herewith in accordance with 37 CFR 1.121(d).

In replacement Figure 1, the various boxes have been given descriptive labels. Support for these changes to Figure 1 can be found in the application as filed, e.g., at pg. 5, lines 12-33.

In replacement Figure 5, the line coming out of the bottom of the decision box 535 has been labeled "Yes". Support for this change to Figure 5 are to be found in the application as filed, e.g., at pg. 14, line 29 to pg. 15, line 23.

Please note: the drawing changes to Figure 1 were requested (on 06/1/2000) in parent application 09/336,487, and were approved by the Examiner in that application (on 12/6/2000).

Applicant will submit marked-up copies of these drawings if required by the Examiner under 37 CFR 1.121(d)(2).

No new matter has been added by these drawing changes and their approval is respectfully requested.

Conclusion

Applicant respectfully submits that this application is in condition for allowance, and an early action allowing the claims is earnestly solicited.

Should the Examiner believe that a telephone call will resolve any outstanding issues in this case, the Examiner is respectfully invited to telephone the undersigned at the number provided.

CHARGE STATEMENT: Deposit Account No. 501860, order no. **2615-0012**.

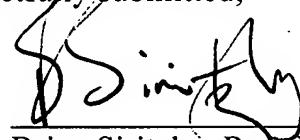
The Commissioner is hereby authorized to charge any fee specifically authorized hereafter, or any missing or insufficient fee(s) filed, or asserted to be filed, or which should have been filed herewith or concerning any paper filed hereafter, and which may be required under Rules 16-18 (missing or insufficiencies only) now or hereafter relative to this application and the resulting Official Document under Rule 20, or credit any overpayment, to our Accounting/ Order Nos. shown above, for which purpose a duplicate copy of this sheet is attached.

This **CHARGE STATEMENT** does not authorize charge of the issue fee until/unless an issue fee transmittal sheet is filed.

CUSTOMER NUMBER
42624

Respectfully submitted,

By:



Brian Siritzky, Reg. No. 37,497

DAVIDSON BERQUIST JACKSON & GOWDEY LLP, 4300 WILSON BLVD., 7TH FLOOR, ARLINGTON,
VA 22203
MAIN: (703) 894-6400 • FAX: (703) 894-6430